

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
TATTOO JOHNNY, INC., :  
Plaintiff, : Docket No.: 08-cv-5572 LP  
v. :  
CHRISTIAN AUDIGIER, INC., SHOP ON :  
STAGE, INC., CHRISTIAN AUDIGIER, TY :  
BOWERS, MACY'S, INC., :  
BLOOMINGDALE'S, INC., NORDSTROM, :  
INC., VANGUARD APPAREL LIMITED, :  
JOHN DOES 1-100, inclusive,  
Defendants.  
----- x

**DECLARATION OF RICHARD LACAVA IN SUPPORT OF DEFENDANTS  
CHRISTIAN AUDIGIER, INC., SHOP ON STAGE, INC. AND CHRISTIAN  
AUDIGIER'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF TATTOO  
JOHNNY'S MOTION FOR A PRELIMINARY INJUNCTION AND EXPEDITED  
DISCOVERY**

Richard LaCava (RL 1671)  
Brian D. Siff (BS 6135)  
DICKSTEIN SHAPIRO LLP  
1177 Avenue of the Americas  
New York, New York 10036  
(212) 277-6500

Attorneys for Defendants  
Christian Audigier, Inc., Shop on Stage, Inc., and Christian Audigier

**DECLARATION OF RICHARD LACAVA**

I, Richard LaCava, hereby declare as follows:

1. I am an attorney duly licensed to practice in the state and federal courts of New York. I am a partner with the law firm of Dickstein Shapiro LLP ("Dickstein"), attorneys for Defendants Christian Audigier, Inc., Shop On Stage, Inc. and Christian Audigier (collectively, "Defendants") in this action. I have personal knowledge of the matters stated herein and, if called as a witness, could and would testify competently thereto.

2. As an attorney handling this litigation, I have possession, custody, supervision and control of Dickstein's records and documents relating to Defendants in general and to this action in particular. I state that the records and documents referred to in this Declaration constitute writings taken, made or received in the ordinary course of business of Dickstein at or near the time of the act, condition or event to which they relate, by persons employed by Dickstein who have a business duty to Dickstein to accurately and completely take, make, receive and maintain such records and documents.

3. Pursuant to an agreement of the parties in this action, on or about July 7, 2008, Plaintiff produced to Defendants copies of documents relating to the creation and title of the designs in issue in this litigation ("Plaintiff's Designs"). As part of that production, Plaintiff produced copies of the designs that are at issue. At the bottom of the page for each design, the name of the artist of that design is listed. The Eagle design name Andrea Ale as the artist. The Knife and Rose design and the Skull Rose on Top design name Damien Friesz as their artist. True and correct copies of Plaintiff's Designs, which were produced to Defendants on or about July 7, 2008, are attached hereto as Exhibit "A" and incorporated by reference herein.

4. Plaintiff's included in its July 7, 2008 document production pictures of various "Christian Audigier" garments that depict the designs at issue in this lawsuit. The pictures produced by Plaintiff appear to be print-outs from the "Christian Audigier" website. True and correct copies of the print-outs of Defendants' garments, which Plaintiff produced to Defendants on or about July 7, 2008, are attached hereto as Exhibit "B" and incorporated by reference herein.

5. In relation to Plaintiff's Motion for Preliminary Injunction, I conducted internet research whereby I did a "Google" search for each of the names of the artists who purportedly created Plaintiff's Designs. The results of my search led me to two different websites that offer flash tattoo designs by Damien Friesz, that appear to be identical to the Knife and Rose and Skull Rose on Top designs offered for sale by Plaintiff. These websites are located at the domain names *<kingpintattoosupply.com>* and *<vosstattoos.com>*. The websites do not appear to be affiliated with Plaintiff. True and correct copies of printouts from the above-named websites depicting the artwork of Damien Friesz collectively are attached hereto as Exhibit "C" and incorporated by reference herein.

6. On July 17, 2008, I took the deposition of Plaintiff's principal, David Bollt. True and correct copies of the relevant excerpts of Mr. Bollt's deposition transcript are attached hereto as Exhibit "D" and incorporated by reference herein.

7. Plaintiff's Complaint and Motion for Preliminary Injunction in this action make repeated references to certain "Terms and Conditions" that accompany the purchase of any design from its website. Specifically, Plaintiff alleges in its Complaint that before consummating any transaction on its Website, a customer must agree to the Terms and Conditions found on the Website. Plaintiff's Complaint quotes the language of the Terms and

Conditions as it relates to the permitted use of Plaintiff's designs. Plaintiff, however, did not attach the Terms and Conditions to its Complaint, nor did Plaintiff attach them to its Motion for Preliminary Injunction.

8. Because Plaintiff made repeated references to the Terms and Conditions, without attaching them as an exhibit to any of the papers filed with this Court, on or about July 16, 2008, I went to Plaintiff's website and printed the Terms and Conditions. Upon reviewing the Terms and Conditions, it is apparent that they contain a "Governing Law and Venue" clause that includes an arbitration provision. At Mr. Bollt's deposition on July 17, 2008, I showed Mr. Bollt a copy of the Terms and Conditions that I printed from Plaintiff's website, which I then marked as Exhibit 6 to Mr. Bollt's deposition. Mr. Bollt confirmed that Exhibit 6 to his deposition was Plaintiff's Terms and Conditions and that those were the Terms and Conditions in place at the time of Mr. Bower's alleged transaction. (See Bollt Depo., 32:4-35:3, attached hereto as Ex. D.) A true and correct copy of the Terms and Conditions, marked as Exhibit 6 to Mr. Bollt's deposition, are attached hereto as Exhibit "E" and incorporated by reference herein.

9. At Mr. Bollt's deposition on July 17, 2008, I asked Mr. Bollt if the Plaintiff had entered into any license agreements with a t-shirt manufacturer. (See Bollt Depo., 78:4, attached hereto as Ex. D.) When Mr. Bollt responded that Plaintiff has a license with a t-shirt manufacturer (See Bollt Depo., 79:3-6), I requested that Plaintiff's counsel, Mr. Seider, provide Defendants with a copy of that agreement (See Bollt Depo., 80:11-12). On Friday, July 18, 2008, I had a telephone conversation with Mr. Seider asking him to produce a copy of the license agreement. During the telephone conference, Mr. Seider stated that the terms of the agreement were confidential, and that he was reluctant to produce the document absent a protective order. I acknowledged Mr. Seider's concerns and asked him to send a copy of the agreement along with

a proposed form of protective order. Mr. Seider agreed to do so. On Saturday, July 19, 2008, Mr. Seider and I exchanged e-mails regarding production of the license agreement, and Mr. Seider's contention that this document was outside of the Court's Order and thus did not require production. During the e-mail exchange, I reminded Mr. Seider that an exclusive license agreement is a document that may relate to title, and thus was within the scope of the Court's Order. Mr. Seider responded by stating that a redacted version of the license agreement would be produced. On 10:34 A.M., Mr. Seider produced a redacted version of the license agreement. Copies of the e-mail exchange is attached hereto as Exhibit F, and the produced redacted license agreement is attached hereto as Exhibit G.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on this 21st day of July, 2008, at New York, New York.

A handwritten signature in black ink, appearing to read "Richard LaCava", is written over a horizontal line.

Richard LaCava, Declarant

**EXHIBIT A**



Copyright 2007 TattooJohnny.com  
Artwork by Andrea Ale



Copyright 2007 TattooJohnny.com  
Artwork by Damien Friesz



Copyright 2007 TattooJohnny.com  
Artwork by Damien Friesz

**EXHIBIT B 1 of 2**

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Address Address [http://www.christianaudigier.com/VIF-Eagle-Men-s-5-5-All-Over-Print-Tee-in-Black-p/t5-t6\\_b8cbadec.htm](http://www.christianaudigier.com/VIF-Eagle-Men-s-5-5-All-Over-Print-Tee-in-Black-p/t5-t6_b8cbadec.htm) Go

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**Our Price: \$143.0**  
Eligible for FREE SHIPPING  
Product Code: T5-T6\_B8CBADEC

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choose a size  
size: First, Select choose a size

► Add to Cart  
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**WOMENS**  
SHORT SLEEVE TEES  
LONG SLEEVE TEES  
HOODIES  
TANKS  
DRESSES  
BOTTOMS  
WOMENS Wallets  
SHOES

**MENS**  
SHORT SLEEVE TEES  
LONG SLEEVE TEES  
HOODIES  
MENS Wallets  
SHOES

**COUTURE**  
TOPS  
DRESSES

**ACCESSORIES**  
HAND BAGS  
CAPS

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Address: Address: [http://www.christianaudigier.com/Twin-Sugar-Skull-Men-s-5-5-All-Over-Print-Tee-in-p/t26-t27\\_b8cbfdsk.htm](http://www.christianaudigier.com/Twin-Sugar-Skull-Men-s-5-5-All-Over-Print-Tee-in-p/t26-t27_b8cbfdsk.htm) Go

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Our Price: \$143.00

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**ACCESSORIES**  
HAND BAGS  
CAPS  
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Address: Address: [http://www.christianaudigier.com/VIF-Eagle-Women-s-5-5-Dip-Dye-Rhinestone-Tee-in-p/m-63\\_b8ybbuec.htm](http://www.christianaudigier.com/VIF-Eagle-Women-s-5-5-Dip-Dye-Rhinestone-Tee-in-p/m-63_b8ybbuec.htm) Go

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100% Cotton  
Machine Wash  
Made in the US

Our Price: \$187.00

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HOODIES  
MENS Wallets  
SHOES

**COUTURE**  
TOPS  
DRESSES

**ACCESSORIES**  
HAND BAGS  
CAPS

Internet

**EXHIBIT B 2 of 2**

Christian Audigier "VIF Eagle" Men's S/S All Over Print Tee in Winter White - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Search Favorites Go Links

Address: [http://www.christianaudigier.com/VIF-Eagle-Men-s-5-S-All-Over-Print-Tee-in-Winter-p/l31-l32\\_b8cbadec.htm](http://www.christianaudigier.com/VIF-Eagle-Men-s-5-S-All-Over-Print-Tee-in-Winter-p/l31-l32_b8cbadec.htm)

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**Our Price: \$143.00**  
Eligible for FREE SHIPPING  
Product Code: L31-L32\_B8CBADEC

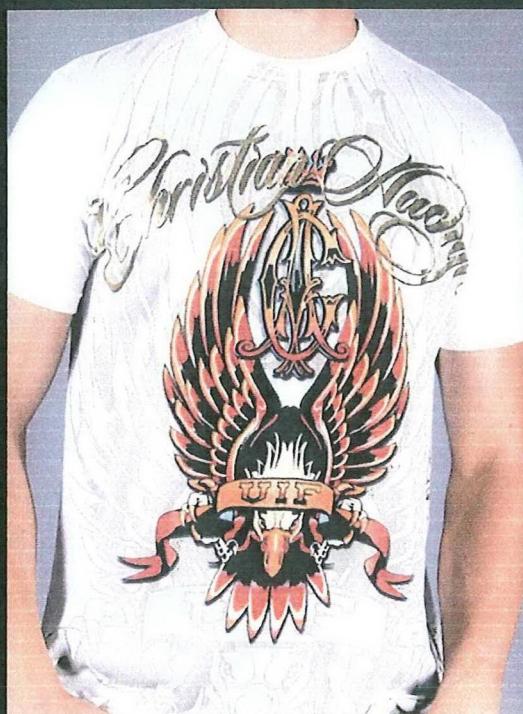
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**WOMENS**  
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HOODIES  
MENS Wallets  
SHOES

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TOPS  
DRESSES

**ACCESSORIES**  
HAND BAGS



Internet

Christian Audigier "Twin Sugar Skull" Men's S/S All Over Print Tee in Blue - Microsoft Internet Explorer

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Address: [http://www.christianaudigier.com/Twin-Sugar-Skull-Men-s-5-S-All-Over-Print-Tee-in-p/t29-t30\\_b8cbfdsk.htm](http://www.christianaudigier.com/Twin-Sugar-Skull-Men-s-5-S-All-Over-Print-Tee-in-p/t29-t30_b8cbfdsk.htm)

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**Our Price: \$143.00**  
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Product Code: T29-T30\_B8CBFD3

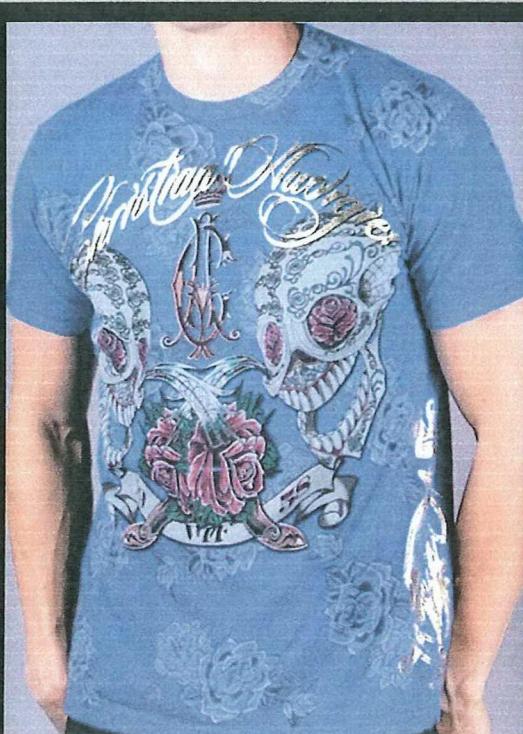
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WOMENS Wallets  
SHOES

**MENS**  
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MENS Wallets  
SHOES

**COUTURE**  
TOPS  
DRESSES

**ACCESSORIES**  
HAND BAGS  
CAPS



Internet

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Address: http://www.christianaudigier.com/VIF-Eagle-Women-s-5-5-Dip-Dye-Rhinestone-Tee-in-p/m-61\_b8ybbue.htm Go

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100% Cotton  
Machine Wash  
Made in the USA  
Our Price: \$187.00

Eligible for FREE SHIPPING  
Product Code: M-61\_B8YBBUE

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Address: http://www.christianaudigier.com/VIF-Eagle-Men-s-5-5-All-Over-Print-Tee-in-Black-p/t5-t6\_b8cbadec.htm Go

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Our Price: \$143.00

Eligible for FREE SHIPPING  
Product Code: T5-T6\_B8CBADEC

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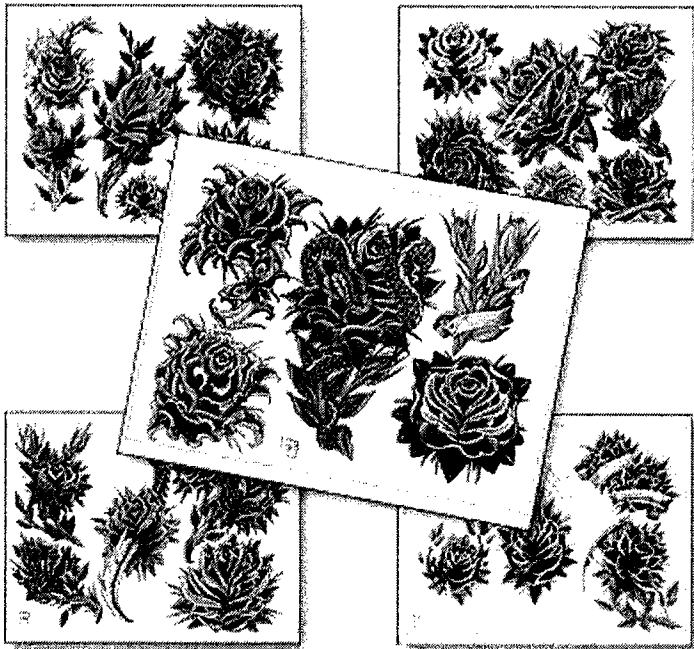
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HAND BAGS  
CAPS  
BELTS

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**EXHIBIT C**

*Damien Friesz Skull Flash Set 2006***Damien Friesz  
Skull Flash Set  
2006****Damien Friesz Skull Flash Set  
2006 - 5 color sheets w/lines****Price:** \$65.00[Buy Product Online](#) | [Visit Store Home](#)**Other Items from Damien Friesz**[\*\*Damien Friesz Hands Flash Set #1\*\*](#) - Damien Friesz Hands Flash Set #1[\*\*Damien Friesz Hands Flash Set #2\*\*](#) - Damien Friesz Hands Flash Set #2[\*\*Damien Friesz Chest Panels Flash Set #1\*\*](#) - Damien Friesz Chest Panels Flash Set #1[\*\*Damien Friesz Half Sleeves Flash Set #1\*\*](#) - Damien Friesz Half Sleeves Flash Set #1[\*\*Damien Friesz Half Sleeves Flash Set #2\*\*](#) - Damien Friesz Half Sleeves Flash Set #2[\*\*Damien Friesz Half Sleeves Flash Set #3\*\*](#) - Damien Friesz Half Sleeves Flash Set #3[\*\*Damien Friesz Roses Flash Set #1\*\*](#) - Damien Friesz Roses Flash Set #1[\*\*Damien Friesz Bio Mechanical Flash Set #1\*\*](#) - Damien Friesz Bio Mechanical Flash Set #1[\*\*Damien Friesz Asian Skulls Flash Set #1\*\*](#) - Damien Friesz Asian Skulls Flash Set #1[\*\*Damien Friesz Skulls & Asian Flowers Flash Set #1\*\*](#) - Damien Friesz Skulls & Asian Flowers Flash Set #1[\*\*Damien Friesz Skull Flash Set 2006\*\*](#) - Damien Friesz Skull Flash Set 2006[Return To Tattoo Supplies and Equipment by Kingpin Tattoo Supply](#)

  
E-commerce powered by MonsterCommerce [shopping cart](#).

*Damien Friesz Roses Flash Set #1***Damien Friesz  
Roses Flash Set  
#1**

**Damien Friesz Roses Flash Set  
#1 - 5 color sheets w/lines**  
**Price: \$65.00**  
[Buy Product Online](#) | [Visit Store Home](#)

**Other Items from Damien Friesz**

[\*\*Damien Friesz Hands Flash Set #1\*\*](#) - Damien Friesz Hands Flash Set #1

[\*\*Damien Friesz Hands Flash Set #2\*\*](#) - Damien Friesz Hands Flash Set #2

[\*\*Damien Friesz Chest Panels Flash Set #1\*\*](#) - Damien Friesz Chest Panels Flash Set #1

[\*\*Damien Friesz Half Sleeves Flash Set #1\*\*](#) - Damien Friesz Half Sleeves Flash Set #1

[\*\*Damien Friesz Half Sleeves Flash Set #2\*\*](#) - Damien Friesz Half Sleeves Flash Set #2

[\*\*Damien Friesz Half Sleeves Flash Set #3\*\*](#) - Damien Friesz Half Sleeves Flash Set #3

[\*\*Damien Friesz Roses Flash Set #1\*\*](#) - Damien Friesz Roses Flash Set #1

[\*\*Damien Friesz Bio Mechanical Flash Set #1\*\*](#) - Damien Friesz Bio Mechanical Flash Set #1

[\*\*Damien Friesz Asin Skulls Flash Set #1\*\*](#) - Damien Friesz Asin Skulls Flash Set #1

[\*\*Damien Friesz Skulls & Asian Flowers Flash Set #1\*\*](#) - Damien Friesz Skulls & Asian Flowers Flash Set #1

[\*\*Damien Friesz Skull Flash Set 2006\*\*](#) - Damien Friesz Skull Flash Set 2006

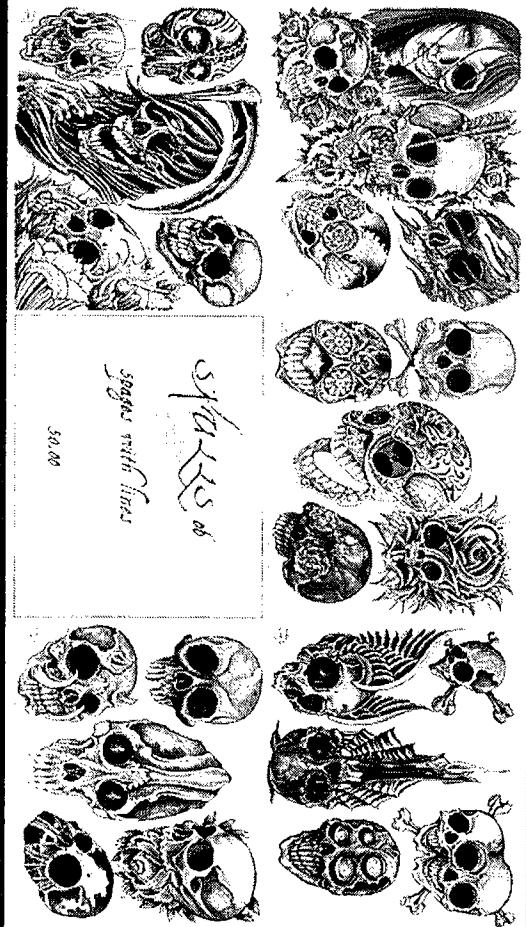
[Return To Tattoo Supplies and Equipment by Kingpin Tattoo Supply](#)

  
E-commerce powered by MonsterCommerce shopping cart software.

VOSS Tattoo - Microsoft Internet Explorer

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Address: <http://westattoos.com/artwork/52122.html>



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As a result, the new technologies in space communications are progressing rapidly, and the new technologies are being developed.

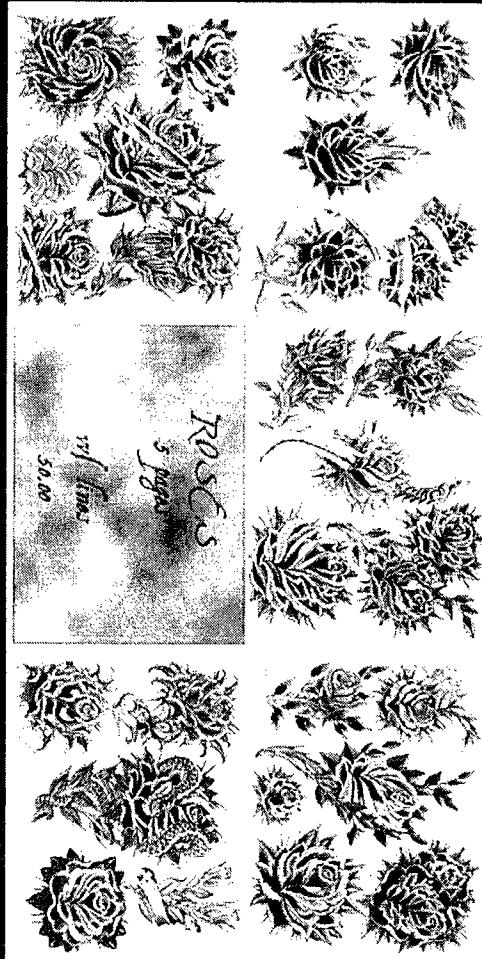
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Go Links >>



ROSES  
3 roses  
\$50.00

5 designs, black & white, in 8x10 size  
includes, each 3 minutes to create designs

[← Back to Tattoo Flash For Sale](#)  
[← Previous](#)  
[Next →](#)

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
DOCKET NO. 08-cv-5572 LP

TATTOO JOHNNY, INC.

Plaintiff,

- V S -

ACOPY

DEPOSITION OF:

CHRISTIAN AUDIGIER, INC., SHOP  
ON STAGE, INC., CHRISTIAN  
AUDIGIER, TY BOWERS, MACY'S  
INC., BLOOMINGDALE'S, INC.,  
NORDSTROM, INC., VANGUARD  
APPAREL LIMITED, JOHN DOES  
1-100, inclusive.

Defendants.

TRANSCRIPT of the stenographic notes of  
the proceedings in the above-entitled matter, as  
taken by and before LINDA M. HOFFMANN, a Certified  
Court Reporter and Notary Public of the State of New  
Jersey, held at the office of OLENDER FELDMAN, ESQS.,  
2840 Morris Avenue, Union, New Jersey, on Thursday,  
July 17, 2008, commencing at 10:15 a.m.

1 A P P E A R A N C E S:

2

3 OLENDER FELDMAN LLP  
4 BY: JONAS SEIDER, ESQ.  
5 MARK D. MILLER, ESQ.  
6 2840 Morris Avenue  
7 Union, New Jersey 07083  
8 Attorneys for Plaintiff

9

10 DICKSTEIN SHAPIRO, LLP  
11 BY: RICHARD LaCAVA, ESQ.  
12 PETER LAMBRIANAKOS, ESQ.  
13 1177 Avenue of the Americas  
14 New York, New York 10036-2714  
15 Attorneys for Defendants, Christian  
16 Audigier, Inc., Shop On Stage, Inc.,  
17 Christian Audigier

18

19

20

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23

24

25

## 1 INDEX

2 WITNESS DIRECT

3 DAVID BOLLT  
4 BY MR. LaCAVA

4

## 5 EXHIBITS

7	NO.	DESCRIPTION	PAGE
8	Bollt-1	Letter dated June 24, 2008 to Judge Preska .....	7
9	Bollt-2	Copyright Assignment and Work Made For Hire	
10		Agreement between Tattoo Johnny and Andrea Alvarez	
11		and Alejandro Alvarez, 2 pages .....	23
12	Bollt-3	Grant of Copyright Rights Agreement between Tattoo Johnny and Damien Friesz,	
13		6 pages, 000013-000018 .....	23
14	Bollt-4	Grant of Copyright Agreement between Tattoo Johnny and Damien Friesz,	
15		000033 .....	24
16	Bollt-5	Declaration of David Bollt ..	30
17	Bollt-6	Terms and Conditions for use of Tattoo Johnny website, 2 pages .....	32
18	Bollt 7	Form CA's, 000027-000032 ..	71
19	Bollt 8	2 Web pages .....	102
20	Bollt 9	KingPin Tattoo Supply Damien Friesz Skull Flash Set 2006, 2 pages, .....	105
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23 SPECIAL REQUESTS  
24 PAGE LINE

25 64 18

1 DAVID BOLLT, residing at 110 Winchester Court,  
2 Fairburn, Georgia, having been duly sworn by the  
3 Notary Public, testified as follows:

4 DIRECT EXAMINATION BY MR. LaCAVA:

5 Q. Okay. Just before we start, Mr. Bollt,  
6 I just want to give you some basic deposition rules  
7 we'll go by. Have you ever been deposed before?

8 A. Never.

9 Q. Okay. From time to time, you can take  
10 breaks if you would like to, get some water,  
11 bathroom, whatever you need. I would ask that just  
12 before you take a break, if there's an open question  
13 on the table, you answer the question first and then  
14 we can take a break. Is that okay?

15 A. Um-hum.

16 Q. Also, I think, for the purpose of the  
17 court reporter, when answering, I think you have to  
18 answer yes and no, and not just either nod or say  
19 "um-hum" or something like that.

20 A. Okay.

21 Q. Okay. Thank you.

22 If I ever ask you a question that you  
23 don't understand, please let me know and I will try  
24 and rephrase or clarify it for you. If not, I'm  
25 going to assume that you understand the question.

1 artwork, we do represent more than 200 artists.

2 Q. Okay. When I say Tattoo Johnny artwork,  
3 I mean artwork that Tattoo Johnny owns.

4 A. They, for the most part, include artwork  
5 that Tattoo Johnny owns, and there are other artists  
6 that are included that earn a royalty, or have  
7 received a flat fee for their inclusion in the  
8 product.

9 Q. I'm handing you now, this will be  
10 Exhibit 5. It's titled Declaration of David Bollt.

11 (Exhibit Bollt-5, Declaration of David  
12 Bollt was received and marked for identification.)

13 Q. Have you ever seen this document before?

14 A. I'm not sure.

15 Q. You're not sure? Is that your name on  
16 the first page?

17 A. Oh, there we go. It is.

18 Q. Okay. I'll ask you, have you seen this  
19 document before?

20 A. I believe so.

21 Q. On the seventh page.

22 A. There we go.

23 Q. Okay. Is that your signature?

24 A. Yes.

25 Q. Okay. And is everything in this

1 Declaration true?

2 A. I believe so.

3 Q. Yes or no?

4 A. Yes.

5 Q. Okay. I'm going to ask you to turn to  
6 Paragraph 5. It's on the second page. If you could  
7 please take a look at that paragraph.

8 A. Um-hum.

9 Q. Okay. This paragraph talks about the  
10 Terms and Conditions found on the Tattoo Johnny  
11 website. Is that correct?

12 A. Um-hum.

13 Q. Are you familiar with those Terms and  
14 Conditions?

15 A. Not closely, no. I know that they  
16 exist, and I know that they're there to discourage  
17 copyright infringement.

18 Q. Are you familiar with the exact words  
19 that are here in Paragraph 5 --

20 A. No.

21 Q. -- in the Terms and Conditions?

22 A. No. Exact words that appear in  
23 Paragraph 5? I could read Paragraph 5.

24 Q. Read it, please.

25 A. Okay. I've read Paragraph 5.

1 Q. Okay. Are those the words that appear  
2 in the Terms and Conditions?

3 A. I don't know.

4 Q. Have you ever seen the Terms and  
5 Conditions?

6 A. I have seen the Terms and Conditions.

7 Q. You have seen the Terms and Conditions?

8 Okay. Let's mark Exhibit 6. This is a  
9 print-out from the Tattoo Johnny website. It's  
10 titled Terms and Conditions for use of Tattoo Johnny  
11 website.

12 (Exhibit Bollt-6, Terms and Conditions  
13 for use of Tattoo Johnny website, 2 pages was  
14 received and marked for identification.)

15 Q. Have you ever seen this document before?

16 A. Yes.

17 Q. So you are familiar with the terms that  
18 are here?

19 A. I am not specifically familiar with the  
20 legal details. Again, I know that the Terms and  
21 Conditions exist, and I've seen it, and I know why  
22 they exist.

23 Q. Do you have -- do you know -- of  
24 Exhibit 6 here, do you know if these are the Terms  
25 and Conditions that were in place when the defendants

1 allegedly downloaded from the Tattoo Johnny website?

2 A. I have no reason to think that they  
3 wouldn't be.

4 Q. Okay. Does Tattoo Johnny ever change  
5 its Terms and Conditions?

6 MR. MILLER: I'm going to object to the  
7 form of the question.

8 Q. Strike that.

9 Has Tattoo Johnny ever changed its Terms  
10 and Conditions on its website?

11 A. Has it ever?

12 Q. Yes.

13 MR. MILLER: I'm going to object to the  
14 form of the question. What Terms and Conditions  
15 specifically are you asking about?

16 MR. LaCAVA: The ones in the document  
17 I've handed to the witness.

18 MR. MILLER: Are you asking about the  
19 first section, the second section, the third section?

20 MR. LaCAVA: All of them.

21 MR. MILLER: Has he ever changed any of  
22 these terms in the website, in the entire time the  
23 website has been up. Is that the question?

24 MR. LaCAVA: That's the question.

25 MR. MILLER: All right.

1 business very well. He's highly creative, and Damien  
2 follows his own artistic impulses and always  
3 impresses us, so we haven't had to, or wanted to,  
4 impose any specific requirements on him, except to  
5 occasionally suggest to him subject matter that our  
6 customers would find desirable.

7 Q. Okay. How does Tattoo Johnny know that  
8 the designs that are submitted by any artist are  
9 original?

10 A. Well, you know, we -- we don't always  
11 know that. And we have on occasion not worked with  
12 artists who have submitted work that we thought was  
13 questionable. But of the artists we work with, we  
14 have a lot of faith that it's all original content.  
15 We know the tattoo industry very well. We know what  
16 everybody's producing across the board, and you know,  
17 we also keep an eye on other popular culture, so we  
18 see what comes through. And if anything ever looks  
19 questionable, the artist we won't work with.

20 Q. Does Tattoo Johnny review designs before  
21 they're actually uploaded?

22 A. Yes.

23 Q. Okay. And can you describe for me a  
24 little more that review process?

25 A. Yeah. You know, the designs all have to

1 be keyworded for search. And this is when they're --  
2 you know, sort of the last step of quality control to  
3 make sure the line art looks good, and to make sure  
4 even the files upload into the system properly so  
5 that the customer isn't going to get some buggy JPEG,  
6 that they get a clean usable English file, and they  
7 get tagged with keywords and approved for download.

8 Q. When they're approved for download, you  
9 said sometimes you look for questionable designs?

10 A. Not so much in that process. When  
11 artists submit their work to us, you know, we're  
12 looking for unique talent. We're looking for artists  
13 that bring something special to the table, and so we  
14 receive far more submissions than we could ever put  
15 in the website, and so we are sifting through what  
16 comes in, looking for people who have their own  
17 natural ability to generate original content. Those  
18 are the only people we have any interest in working  
19 with. So if somebody appears to be submitting  
20 designs that are not -- that are not original, or if  
21 they're derivative, then we're not really interested.  
22 Those aren't the people we work with. We basically  
23 kind of like to believe we represent the cream of the  
24 crop out there.

25 Q. How would you know that any particular

1 design was not original or derivative?

2 A. Well, it's certainly possible that a  
3 specific design could slip through. We've certainly  
4 stopped -- not all the artists understand, so we have  
5 had an artist submit artwork that maybe he did a  
6 Superman logo, because, you know, in his tattoo  
7 studio, he might tattoo that on somebody. That's not  
8 our concern. But when it comes in to Tattoo Johnny,  
9 if we see anything like that, we explain to them why  
10 we can't use that.

11 Q. Okay. Has Tattoo Johnny ever received  
12 any complaint from any artist that a piece of artwork  
13 available, or a tattoo design available has been  
14 copied from them?

15 A. No.

16 Q. Other than the documents that you  
17 provided to us, that Tattoo Johnny provided to  
18 defendants, do you have any other records that  
19 indicate the efforts that we're going through to  
20 develop these designs?

21 A. Not other than what was provided, no.

22 Q. Okay. Let's turn back to the eagle  
23 here.

24 You said that this was designed by  
25 Andrea and Ale. Is that correct?

1 that's in Exhibit E of your Declaration?

2 A. I don't know. This image has appeared  
3 in many forms, so I don't know.

4 Q. Can you describe for me what you mean by  
5 "this image has appeared in many forms"?

6 A. Well, it sells in print to tattoo  
7 studios, in which case, at the bottom of the page  
8 would say something to the effect of "Copyright,  
9 Tattoo Johnny," the URL, and the year.

10 And something very similar, but not  
11 identical, would appear on the downloaded version --

12 Q. Okay.

13 A. -- of the image. But when we use it in  
14 other licensing, it's not always practical to affix a  
15 copyright notice to certain forms. So...

16 Q. And following up with that, how do you  
17 use this image in other licensing?

18 A. This is a popular image, so it's been  
19 used in other licenses of ours.

20 Q. Can you describe for me specifically  
21 what those licenses are?

22 A. Off the top of my head, cell phone menu  
23 interface.

24 Q. Okay.

25 A. There's something called an iPod pin.

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1 know if there's another name for the company.

2 Q. Okay. Was that a royalty arrangement,  
3 as well?

4 A. It's a royalty arrangement, but I don't  
5 know if this has been produced as an item.

6 Q. Okay. Do you know what the royalty rate  
7 might have been in that agreement?

8 A. No.

9 Q. Did you negotiate that agreement?

10 A. I probably had a hand in it.

11 Q. To the best of your knowledge, has it  
12 been signed?

13 A. Yes.

14 Q. To the best of your knowledge, has the  
15 cell phone agreement been signed, as well?

16 A. Yes.

17 Q. Are there any other licensing agreements  
18 that you know of that relate to the eagle design?

19 A. I'm not sure if the eagle appears on the  
20 guitar straps, but it likely could.

21 Q. Okay. Any others?

22 A. I can't say, off the top of my head.

23 Q. Okay.

24 Back to the Exhibit E in the eagle  
25 design, and the copyright notice at the bottom of the

1 when I contacted Ty Bowers. And so this is -- this  
2 is a unique instance.

3 Q. Does Tattoo Johnny have any other  
4 registered copyrights?

5 A. I don't know.

6 Q. Okay. Who would know?

7 A. I don't know.

8 Q. Before Tattoo Johnny would decide to  
9 file a copyright application, would they do any  
10 research to see what any prior designs existed?

11 A. What do you mean?

12 Q. Just to know what else is out there.

13 A. I'm still not sure what you mean.

14 Q. Okay. We'll strike the last question.

15 Before Tattoo Johnny would decide to  
16 file a copyright application, would they do any  
17 research to make sure that the work or the design  
18 that they're filing for protection was original?

19 A. When you say "was original," I'm not  
20 sure what you mean.

21 Q. Wasn't copied from someone else.

22 A. That's part of the screening process  
23 with our artists.

24 Q. Okay.

25 A. You know, again, I don't know how to

1 emphasize that, you know, our artists -- the tattoo  
2 industry is a very competitive place, and these  
3 artists are all trying to make a name for themselves  
4 based on their unique approach for generating images.  
5 This is why we select these people to work with and  
6 represent them.

7                   And so these are guys who, you know, I  
8 mean, you know, I don't even know how many skulls or  
9 butterflies we have in the collection, but they're  
10 all distinct, and this is why, you know, we have such  
11 a large collection available, it's because every  
12 customer is looking for a different image.

13               Q.       So taking, for example, the eagle, so  
14 there was no specific research that was done to make  
15 sure that that work was original.

16               A.       You know, again, that was part of the  
17 screening process with the artists. What we found  
18 was that we had some very talented, highly creative  
19 artists that were generating unique content from  
20 their own artistic inspiration. And so the research  
21 was done when we selected them to draw for us.

22               Q.       Okay. So just to clarify, after the  
23 designs were submitted, the design for the eagle was  
24 submitted, there was no further checking?

25               MR. SEIDER: I have an objection to

1 form. Are you asking just on his behalf?

2 Q. Tattoo Johnny's behalf. Does the  
3 company check?

4 A. You know, as I said before, you know,  
5 any designs or artists that seem like they're engaged  
6 in questionable practices --

7 Q. Specifically for the eagle, specifically  
8 for the eagle.

9 A. No.

10 Q. Okay.

11 A. It was -- it really seemed like a  
12 special example of an eagle.

13 Q. Okay. How about for the skull? After  
14 it was submitted, was there any check done to see if  
15 it was copied from anywhere?

16 A. No. Damien's a proud and fiercely  
17 independent artist.

18 Q. How about for the rose and the knife?

19 A. Same.

20 Q. Same because that's Damien's work?

21 A. Yeah. And like with a lot of our  
22 artists, these are guys who, you know, they --  
23 they're not getting where they're going by copying.

24 Q. Okay.

25 A. You know, there's a lot of tattoo

1 A. I suppose it's possible.

2 Q. Okay. Did anyone at Tattoo Johnny  
3 contact the artist to ask them what the correct date  
4 of first publication was?

5 A. I don't know that the artist would know.

6 Q. The artist would not know the date that  
7 they first published their work?

8 A. The date we published their work?

9 MR. SEIDER: Objection to form.

10 Q. Okay.

11 MR. SEIDER: You're assuming that the  
12 artist published the work prior to submitting it to  
13 Tattoo Johnny for publication.

14 MR. LaCAVA: Understood. I will  
15 clarify.

16 Q. Do you know if any of the artists  
17 published their work before submitting it to Tattoo  
18 Johnny?

19 A. I don't know.

20 Q. Did you bother to check before filing  
21 copyright registrations?

22 A. No.

23 Q. Okay. Of any of the three designs, the  
24 eagle, the skull with the rose on top, and the knife  
25 and rose, has Tattoo Johnny licensed any of the

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1 tattoo, I would imagine so.

2 Q. Okay. How about to anyone -- strike  
3 that.

4 Has Tattoo Johnny licensed any of the  
5 copyrights in suit for use on T-shirts?

6 A. You know, that's a bit of a debate. The  
7 eagle is certainly an image we had every intention of  
8 using on T-shirts. And we don't want to be accused  
9 of plagiarism, so I'm not sure what's going to happen  
10 with that.

11 Q. Can you describe for me what you meant  
12 by you intended on using? You intended on using the  
13 eagle on T-shirts?

14 A. Absolutely. It's perfect for T-shirts.

15 Q. Okay. Did you actually have any license  
16 agreements with any entity for placing the eagle on a  
17 T-shirt?

18 A. We art direct a lot of our licenses, so  
19 they don't necessarily come in with specific requests  
20 for specific work. People look to Tattoo Johnny if  
21 they're going to do a line of T-shirts to art direct  
22 the line of T-shirts, because we know our inventory  
23 and we know our artists, and we know what sells. So  
24 with a T-shirt license, for example, we're going to  
25 go through our artwork and hand pick our favorite

1 artists and our favorite images to bring to the  
2 market. Certainly that eagle was on the list.

3 Q. Okay. Has Tattoo Johnny entered into  
4 any agreement with any -- with anyone to place images  
5 on T-shirts, any of the Tattoo Johnny designs?

6 A. We have a T-shirt license.

7 Q. Okay. Who is that with?

8 A. BZT's.

9 Q. Where is BZT's located?

10 A. San Diego.

11 Q. Is BZT's affiliated with Tattoo Johnny  
12 at all?

13 A. Affiliated?

14 Q. Does anyone who has an interest in  
15 Tattoo Johnny operate or own an interest or anything  
16 like that in BZT's?

17 A. It's a licensing agreement.

18 Q. I'm sorry. The company, BZT's, does  
19 anyone, any employee or owner of Tattoo Johnny own an  
20 interest in BZT's?

21 A. No.

22 Q. They're a separate entity?

23 A. Um-hum, yes.

24 Q. Can you explain to me the terms of that  
25 licensing agreement with BZT's?

1           A.        I don't know all the details.  It's a  
2 royalty agreement.  Again, as far as what we're to  
3 bring to the table is our very best designs.

4           Q.        Is it an exclusive agreement with BZT's?

5           A.        Exclusive?

6           Q.        As in you, Tattoo Johnny's, will not  
7 license another T-shirt manufacturer?

8           A.        Correct.

9           Q.        It is exclusive?

10          A.        It is exclusive.

11            MR. LaCAVA:  Counsel, I would like a  
12 copy of that agreement.

13          Q.        Do you know if BZT's has given any  
14 rights of enforcement in that --

15          A.        I don't know.

16          Q.        Does the license with BZT's mention  
17 specific Tattoo Johnny designs?

18          A.        No.

19          Q.        When was that license agreement entered  
20 into?

21          A.        I don't know.

22          Q.        Was it entered into in 2007?

23          A.        I'm not sure.

24          Q.        2008?

25          A.        It's either 2007 or 2008.

1 Q. No. Was it a very short conversation?

2 A. It was fairly short. It was right to  
3 the point.

4 Q. Okay. If you would turn to paragraph 11  
5 of your Declaration. It says -- can you read that  
6 paragraph just for a second. To yourself is fine.

7 A. Okay.

8 Okay.

9 Q. So you had spoken to Mr. Bowers  
10 sometimes shortly after December 11 of 2007.

11 A. I'm fairly confident that it was within  
12 two weeks.

13 Q. Okay. Fine.

14 Why, in May of 2008, were you reviewing  
15 Christian Audigier, Inc.'s website?

16 A. We are doing design for all manner of  
17 product, and even prior to the BZT's deal being  
18 signed, we'd been pitching apparel designs. We have  
19 a clothing designer that we're trying to work with to  
20 do an apparel line. And so I'm looking all over.  
21 We're looking all over the internet for inspiration  
22 and examples of all kinds of design. We've looked at  
23 our competitors' website. We looked at surfboard  
24 websites. We look at, you know, in all manner of  
25 product that tattoo design can go on.

1                   We often mock up samples of, say, we  
2 have a stationery company we want to work with and  
3 they seemed a little nervous about tattoo design.  
4 Maybe it -- you know, some people still carry the  
5 stigma. And so we just mocked up samples of like 20  
6 different stationery notebooks for them to see how it  
7 could be. And this was purely speculative mock-ups.

8                   And we'll do the same thing with  
9 surfboards and we'll do the same thing with musical  
10 equipment. This is what we do. So yeah, we have  
11 mock-ups for apparel, as well as we research what's  
12 out there. We research what's popular.

13                   Looking at Don Ed Hardy and Christian  
14 Audigier, you know, when it's our intention to go  
15 into the apparel business, it's sort of a natural  
16 thing for us to do.

17                   Q.        Okay. You mentioned a clothing  
18 designer. Which clothing designer are you trying to  
19 work with?

20                   A.        My good friend, Joe Faris.

21                   Q.        Is there a name to the clothing line?

22                   A.        Joe had done a line of tattoo clothing  
23 years ago, and 9/11 happened, but he always has felt  
24 there's tremendous potential, that tattoo is sort of  
25 a new sector in fashion. Kind of like urban street

1 wear was considered a fad, it's now its own sector.  
2 And he thinks that tattoo-related clothing has that  
3 same potential.

4 And so we've been talking to Joe for a  
5 long time about doing an apparel line where Joe can  
6 act as a clothing designer and I can work as the art  
7 director and graphic designer, and that together we  
8 can make some really exciting product.

9 Q. Is Joe located in New York?

10 A. I'm not sure where Joe is. You'll catch  
11 him on Project Runway this season.

12 Q. Did you do -- from the time you spoke  
13 with Mr. Bowers, did you do regular reviews of the  
14 Christian Audigier website?

15 A. No, we assumed it was a closed matter.

16 Q. Okay. Can you read paragraph 12 of your  
17 Declaration for me?

18 A. Okay.

19 Q. Okay? If I just heard you correctly,  
20 you said after you spoke with Mr. Bowers, you didn't  
21 have any reason to monitor the website. But here in  
22 paragraph 12, it says, "Defendants CAI, Shop on  
23 Stage, Inc., and Christian Audigier are affiliated  
24 with the Don Ed Hardy brand which gave me reason to  
25 monitor the CAI website for any possible

1 infringement."

2                   Would you like to clarify that?

3                   A.        Yeah. You know, as I stated, we are  
4 involved in design. I read over this very carefully  
5 as it was prepared by counsel, and -- and I -- you  
6 know, I'm sorry to see that there's a discrepancy.

7                   Q.        Okay. Turn to Exhibit D of your  
8 Declaration for me. Take a look at that for a  
9 second.

10                  A.        Um-hum.

11                  Q.        Do you know who prepared these  
12 screenshots in Exhibit D of your Declaration?

13                  A.        I don't know.

14                  Q.        Okay. Do you know when they were taken?

15                  A.        I don't know.

16                  Q.        Okay. And are these the same  
17 screenshots you're referring to in paragraph 12 of  
18 your Declaration?

19                  A.        Yes.

20                  Q.        Okay. Taking a look at your Declaration  
21 again, the last sentence in paragraphs 11 and 12 are  
22 almost, if not exactly, identical.

23                  A.        Um-hum.

24                  Q.        Is that correct?

25                  A.        Yes.

1 Q. Okay. Who made the decision to send a  
2 cease and desist letter to defendants?

3 A. It was a mutual decision.

4 Q. Of whom?

5 A. Myself, my business partner, and  
6 counsel.

7 Q. Is Exhibit F to your Declaration that  
8 cease and desist letter?

9 A. It would appear to be.

10 Q. Okay. Have you ever seen this letter  
11 before?

12 A. I believe so.

13 Q. In what form have you ever seen this  
14 letter?

15 A. In what form?

16 Q. Scratch that.

17 Did you ever review a draft of this  
18 before it was sent to defendants?

19 A. I believe so.

20 Q. Okay. Have you ever seen defendants'  
21 allegedly infringing products?

22 A. Yes.

23 Q. Where?

24 A. I was in New York recently for the  
25 licensing show, the global licensing show, and

1 counsel had purchased one of the shirts from one of  
2 the stores so we could actually get a look at it. It  
3 was the eagle. It was -- it was remarkable.

4 Q. Okay. When were you in New York for  
5 that show?

6 A. I'm not sure of the dates of the  
7 licensing show. It was recently.

8 Q. "Recently," as in the last couple  
9 months?

10 A. Yeah.

11 Q. Okay. If you look at Exhibit G of your  
12 Declaration.

13 A. Um-hum.

14 Q. Can you explain to me who took these  
15 pictures?

16 A. Counsel.

17 Q. Counsel. Do you know when?

18 A. I believe it was shortly after -- it was  
19 shortly after the licensing show, I believe. It was  
20 fairly recently. We had heard that our designs were  
21 sort of being featured as some of the flagship images  
22 of the new Christian Audigier line. So when I heard  
23 that they were in the window, we thought it would be  
24 a good idea to take pictures.

25 Q. So was it you who directed counsel to

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1 step was to really get involved in licensing; so not  
2 this licensing show but the one previous we went out  
3 to the global licensing show and got involved in the  
4 licensing business.

5 Q. Okay. So of the copyright, or of the  
6 copyrighted designs that are at issue in this  
7 litigation, do you know of any other person who's  
8 claiming any rights in those copyrighted designs?

9 A. No.

10 Q. So it's your testimony that the artists  
11 who assigned the copyrights to Tattoo Johnny no  
12 longer own the copyrights in that work?

13 A. That's my understanding.

14 Q. Okay.

15 (Exhibit Bollt 8, 2 Web pages were  
16 received and marked for identification.)

17 MR. LaCAVA: What I've just handed to  
18 the witness is a printout that's found on the  
19 internet of a screenshot of vosstattoos.com website.  
20 Are you aware of this website?

21 A. Not specifically. Is this Damien's  
22 website? I'm not supposed to ask the question.

23 Q. I'm going to ask you, do you believe  
24 this is Damien Friesz's website?

25 A. It likely could be. I don't know

1 specifically.

2 Q. Are you familiar at all with this  
3 website?

4 A. No.

5 Q. Okay. If you can, can you read for me  
6 the printing in the left-hand corner of the  
7 screenshot? It sort of goes vertical. Can you read  
8 it out loud?

9 A. Out loud now?

10 Q. Yes, please.

11 A. Okay. It looks like a copyright notice,  
12 "2006-2006 Damien Friesz."

13 Q. Okay. Do you know why if -- sorry,  
14 scratch that.

15 Can you look at the -- there are six  
16 panels, five of them have tattoo designs.

17 A. Um-hum.

18 Q. Okay? The middle panel top, can you --  
19 does that skull that's there appear to be the same  
20 skull that's the subject of your copyright  
21 registration?

22 A. It appears to be, yes.

23 Q. Do you know why Damien Friesz would  
24 continue to put his copyright notice in relation to  
25 this drawing?

1 A. As opposed to?

2 Q. As opposed to Tattoo Johnny's copyright  
3 notice?

4 A. You know, I think in general artists  
5 sign their work and put down copyright notices just  
6 to alert the public that there's a protection in  
7 place.

8 Q. Could you turn to the second page of  
9 this. It says at the top  
10 "vosstattoos.com/artwork/52120.html."

11 A. Yes.

12 Q. Have you ever seen this website before?

13 A. No.

14 Q. Can you read for me what the wording is  
15 on the bottom left-hand corner?

16 A. It appears to be "Copyright 2006," and  
17 then I don't know. It looks like "2888" to me,  
18 "Damien Friesz." But obviously there's a date range  
19 and a copyright notice with his name.

20 Q. Okay. And again, in the middle panel at  
21 the top, does that appear to be the --

22 A. Yes.

23 Q. -- the knife and rose design --

24 A. Yes, it does.

25 Q. -- that's at issue in this litigation?

1 A. Yes.

2 Q. Okay.

3 (Exhibit Bollt 9, KingPin Tattoo Supply  
4 Damien Friesz Skull Flash Set 2006, 2 pages, was  
5 received and marked for identification.)

6 Q. I'm handing you Exhibit 9. Exhibit 9 is  
7 a screenshot print-out from KingPin Tattoo Supply.  
8 And it says, "Damien Friesz Skull Flash Set 2006."  
9 Have you ever seen this website before?

10 A. No.

11 Q. Is Tattoo Johnny at all associated with  
12 KingPin Tattoo Supply?

13 A. No.

14 Q. Do you know who KingPin Tattoo Supply  
15 is?

16 A. I recognize the company name from the  
17 tattoo circuit, but I am not -- I don't know these  
18 people.

19 Q. Okay. Do you see the five panels of  
20 tattoo designs that are on this front page?

21 A. Yes.

22 Q. In the bottom right-hand corner, do you  
23 see the panel that's there that's partially covered  
24 by the top panel?

25 A. Yes.

1           Q.        Okay. The skull that's in the middle  
2 there, does that appear, from what you can make of  
3 the image, to be the skull design?

4           A.        It appears to be, yes.

5           Q.        Okay. Did Tattoo Johnny give KingPin  
6 Tattoo Supply a license to sell these designs?

7           A.        No.

8           Q.        Did Tattoo Johnny give a license to  
9 Damien Friesz to sell these designs?

10          A.        Give Damien Friesz a license? With  
11 almost all of our artists, we do have an  
12 understanding that they're allowed to sell their own  
13 work.

14          Q.        Would that be written at all in the  
15 assignment agreement with Damien Friesz?

16          A.        No.

17          Q.        It's a verbal understanding?

18          A.        Yeah.

19          Q.        This website seems to indicate that this  
20 skull flash set was available in 2006. Do you have  
21 any reason to believe that that is incorrect?

22          A.        No.

23          Q.        Is it possible that Damien Friesz  
24 created this skull design in 2006 and has been  
25 selling it since then?

1 A. Certainly.

2 Q. Okay.

3 (Exhibit Bollt 10, KingPin Tattoo  
4 Supply, Damien Friesz Roses Flash Set # 1, 2 pages  
5 was received and marked for identification.)

6 Q. This is another printout, screenshot  
7 from KingPin Tattoo Supply. And it's titled "Damien  
8 Friesz Roses Flash Set Number 1."

9 Have you ever seen this website before?

10 A. No.

11 Q. Did -- if you look at the five panels of  
12 tattoo designs that are here, the bottom left-hand  
13 corner, does the center design appear to be the knife  
14 and rose design that's the subject of this  
15 litigation?

16 A. Yes, it does.

17 Q. Did Tattoo Johnny give KingPin Tattoo  
18 Supply a license to sell this design?

19 A. No.

20 Q. Did Tattoo Johnny give Damien Friesz a  
21 license to sell this design?

22 A. We have a verbal understanding with most  
23 of our artists that they have the right to continue  
24 selling their own work.

25 Q. Okay. To the best of your knowledge,

1 has there ever been a tattoo artist that has drawn an  
2 eagle?

3 A. Yes.

4 Q. Have there been many variations of  
5 eagles?

6 A. Yes.

7 Q. About how many, would you guess?

8 A. I would guess -- you know, I'm not going  
9 to put a number on that. You know, it's kind of like  
10 snowflakes, the way each one is distinct and unique  
11 no matter how many fall from the sky. It's a little  
12 like that.

13 Q. Okay. To the best of your knowledge,  
14 has there ever been a tattoo artist that has drawn a  
15 skull?

16 A. Yes.

17 Q. To the best of your knowledge, has there  
18 ever been a tattoo artist that has drawn a skull with  
19 a rose on it?

20 A. I would suspect that that's probably  
21 likely.

22 Q. To the best of your knowledge, has there  
23 ever been a tattoo artist that has drawn a flower  
24 with a knife through it?

25 A. Yes.

1 Q. To the best of your knowledge, has there  
2 ever been a tattoo artist that has drawn a rose with  
3 a knife through it?

4 A. That's likely.

5 Q. To the best of your knowledge, do you  
6 know if any such designs exist, other than the ones  
7 that are subject to this litigation? The rose and  
8 knife.

9 A. Not, specifically but it seems like  
10 something that probably exists. And there's  
11 obviously demand for it to exist in multiple unique  
12 forms, or else we would have no business bringing it  
13 to market.

14 MR. LaCAVA: Can we take a five-minute  
15 break off the record, and then I'll see if I have  
16 anything else for you.

17 (A recess is taken.)

18 Q. I'm finished questioning the witness and  
19 ask counsel if they have any questions they would  
20 like to follow up with.

21 MR. SEIDER: I have no follow-up  
22 questions.

23 MR. LaCAVA: So we are complete.

24 (The proceedings concluded at 1:12 p.m.)

25

**EXHIBIT E**

## TERMS AND CONDITIONS FOR USE OF TATTOO JOHNNY WEBSITE

Welcome to the Tattoo Johnny, Inc. website. Below are the terms and conditions that govern your use of this site.

THESE TERMS AND CONDITIONS OF USE CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND TATTOO JOHNNY, INC. ("TATTOO JOHNNY," "WE" OR "OUR"). PLEASE READ THIS AGREEMENT ("AGREEMENT") IN ITS ENTIRETY BEFORE YOU CONTINUE TO USE THIS WEBSITE OR DOWNLOAD ANY IMAGE.

### **Copyrights**

Any purchase of a tattoo design from Tattoo Johnny grants the purchaser the right to reproduce the design for their personal tattoo only. Any other reproduction is strictly prohibited. All designs and images by Tattoo Johnny artists are protected by state and federal copyright laws. No one may copy, sell, distribute, and/or in any way make use of the images and designs by any of these artists without the express written consent of Tattoo Johnny, Inc. Anyone who violates any of the exclusive rights of the copyright owner and/or licensed agent shall be criminally prosecuted under section 2319 of title 18, United States Code, including imprisonment for up to 5 years for the first offense and civil and criminal penalties of up to \$150,00.00 per violation.

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certain categories of damages. Therefore, some or all of the limitations above may not apply to you to the extent they are prohibited or superseded by state or national provisions.

### **Governing Law and Venue**

This Agreement shall be interpreted, construed and governed by the laws of the State of New Jersey, USA, without reference to its laws relating to conflicts of law and not including the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods. Venue for all disputes arising under this Agreement shall lie exclusively in the Superior Courts of the State of NJ. Users of this website agree that any and all disputes arising from the use of this website, or the ordering of materials from this website, shall be settled by binding arbitration. Notwithstanding the foregoing, Tattoo Johnny shall have the right to commence and prosecute any legal or equitable action or proceeding before any non-US court of competent jurisdiction to obtain injunctive or other relief in the event that, in the opinion of Tattoo Johnny, such action is necessary or desirable.

### **No Waiver, Severability of Terms and Clauses**

No action of Tattoo Johnny, other than an express written waiver or amendment, may be construed as a waiver or amendment of any of these Terms and Conditions of Use. Should any clause of these Terms and Conditions of Use be found unenforceable, wherever possible this will not affect any other clause and each will remain in full force and effect.

We reserve the right to change these Terms and Conditions of Use, prices, information and available contractual license terms featured on this website without prior notice. These conditions set forth the entire agreement between Tattoo Johnny and you relating to your use of this website.

### **Tattoo Test Drive Disclaimer**

Do not use Tattoo Test Paper if you are pregnant or nursing a baby because of chemicals in the adhesive and possible migration of chemicals from the copiers or printer ink into your body. Some individuals can develop skin allergic reactions even when using medical grade glue. You must assume all responsibility for the safe use of this adhesive and this paper. Do not use in high speed industrial type copiers or printers. Even though this product has been tested on most late model ink-jet and laser printers, the user must determine the compatibility of this paper with his/her own equipment. In some cases if the paper jams and stays in contact with the hot fusing roll in copiers and laser printers damage can occur. In case of paper jam, remove paper immediately. Do not attempt to reuse this product. Do not attempt to print on pages that have already been cut or have holes in them. This can cause a paper jam and may possibly damage your equipment. You must assume all responsibility for any damage to your equipment.

### **Returns and Exchanges**

Electronically downloaded tattoo designs and stencils are non-refundable. Tattoo Johnny® will accept returns on Temporary Tattoo Paper and Healing Solution (that has not been or used or damaged) within 30 days of purchase. Tattoo Johnny® will not accept returns for any flash collections, flash sets, or individual flash sheets that have been opened. Tattoo Johnny® will exchange any items that have been damaged during shipping within 30 days of purchase (buyer is responsible for return shipping). Shipping and handling charges are non-refundable, except in the case of a manufacturer's defect. If there is a problem with your order, please call our Customer Service Hotline at 404-592-2901 or contact us.

### **Customer Service**

Our customer service office is open from 9AM - 5PM, Monday Thru Friday, Eastern Standard Time. Should you have any questions regarding your merchandise order, please call us at 404-592-2901 or contact us.

If you have any questions regarding your digital download order, please see our FAQ's and contact us through our online forms. A representative will contact you via e-mail or phone. Do not call the Order Center for technical help with the website.

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**CLOSE** 

**EXHIBIT F**

**LaCava, Richard**

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**From:** Jonas Seider [jseider@olenderfeldman.com]  
**Sent:** Monday, July 21, 2008 10:34 AM  
**To:** LaCava, Richard  
**Cc:** Mark Miller  
**Subject:** RE: Tattoo Johnny

**Attachments:** Tattoo Johnny - Audigier - T-Shirt Licensing Agreement Redacted 7.21.08.pdf

Richard:

I have attached a redacted version of the licensing agreement. I turn your attention to section 21 which deals with enforcement rights.

Jonas M. Seider, Esq.

---

**From:** LaCava, Richard [mailto:LaCavaR@dicksteinshapiro.com]  
**Sent:** Monday, July 21, 2008 9:26 AM  
**To:** Jonas Seider  
**Cc:** Mark Miller; Turken, James; Siff, Brian; Lambrianakos, Peter; Wright, Fawn  
**Subject:** RE: Tattoo Johnny

Jonas,

I still have not yet received the contract with BZ Tees. While you seem to have changed your mind now, you did agree to send a copy of it along with a form of protective order.

Regardless of your statements below that the contract is not a transfer of title document and that Tattoo Johnny does not assign enforcement rights to licensees, Mr. Bollt had no recognition of this contract's terms during his deposition, even though he stated he was the person who negotiated that contract. Therefore, your representation as to what the document contains or does not contain is of no consequence.

I expect to receive a copy of the BZ Tees contract, redacted or not, before 10 am today, or I will be forced to bring this matter to the Judge's attention.

Regards,  
Rich

**Richard LaCava**  
Dickstein Shapiro LLP  
1177 Avenue of the Americas | New York, NY 10036  
Tel (212) 277-6659| Fax (212) 277-6501  
lacavar@dicksteinshapiro.com

---

**From:** Jonas Seider [mailto:jseider@olenderfeldman.com]

**Sent:** Saturday, July 19, 2008 4:29 PM  
**To:** LaCava, Richard  
**Cc:** Mark Miller  
**Subject:** RE: Tattoo Johnny

Richard:

First and foremost, we did not have an agreement as to the production of the document. I mentioned the confidential nature of the contract and you simply requested that I send it along with a proposed confidentiality and sealing order. I never agreed to send the contract prior to the execution of such an order.

Second, since the contract is not a transfer of title document, it does not fall under the umbrella of Judge Preska's expedited discovery Order. Since Tattoo Johnny does not assign enforcement rights to Licensees, the licensing agreement in question is not a document that transfers title and Tattoo Johnny is indeed the proper party bringing this action. Despite your assumption, Tattoo Johnny indeed retains the rights of enforcement. As such, on Monday morning, I will forward you a redacted copy of the Licensing Agreement that will settle any questions you may have with regard to any standing issue. Once again, since Tattoo Johnny does not assign the right of enforcement, this document does not fall within the scope of Judge Preska's Order and thus we have complied with said Order.

Jonas M. Seider, Esq.

---

**From:** LaCava, Richard [mailto:[LaCavaR@dicksteinshapiro.com](mailto:LaCavaR@dicksteinshapiro.com)]  
**Sent:** Saturday, July 19, 2008 3:18 PM  
**To:** Jonas Seider  
**Cc:** Lambrianakos, Peter; Turken, James; Siff, Brian; Wright, Fawn  
**Subject:** RE: Tattoo Johnny  
**Importance:** High

Jonas,

I am very disappointed to learn that you have now changed our agreement regarding the BZ Tees license.

You are correct to note that Judge Preska's Order requires the production of documents regarding title to the works in question in this litigation. Mr. Bollt's testimony regarding this contract indicated that this is an exclusive contract with BZ Tees. As is common in exclusive contracts dealing with copyrights, the exclusive licensee may be the proper party with standing to sue for infringement. Accordingly, this contract is highly relevant to title of the works in question.

If you have any issue in releasing a confidential document without a protective order in place, please let me know and we can have a joint conference with Judge Preska on Monday extending all dates until such time as she signs a protective order. If you do not wish to have a conference with Judge Preska regarding this and still refuse to produce the document, we can only assume that it contains language that is adverse to Tattoo Johnny's claim of title and standing in this matter. In such a case, we will be contacting Judge Preska about this matter Monday morning and request that all dates be extended until we have had sufficient time to review this contract with BZ Tees, and/or request that Tattoo Johnny's motion for preliminary injunction be denied for failure to comply with the Judge's Order.

Please let me know how you would like to proceed in this matter.

Best regards,  
Rich

**Richard LaCava**  
Partner  
Dickstein Shapiro LLP  
1177 Avenue of the Americas | New York, NY 10036  
Tel (212) 277-6659| Fax (212) 277-6501  
[lacavar@dicksteinshapiro.com](mailto:lacavar@dicksteinshapiro.com)

---

**From:** Jonas Seider [mailto:[jseider@olenderfeldman.com](mailto:jseider@olenderfeldman.com)]  
**Sent:** Saturday, July 19, 2008 12:37 PM  
**To:** LaCava, Richard  
**Subject:** RE: Tattoo Johnny

Richard:

I have attached to this e-mail the Western Union pay receipt for Andrea and Ale which represents payment for the eagle.

As I mentioned yesterday, the contract with BZ Tees is a confidential document. Also, since the expedited discovery order for the preliminary injunction hearing only requires us to hand over creation and title documents regarding the works and the contract does not fall into either category of document, I don't believe you are entitled to this document at this time. I would be happy to consider your reasons for requesting this document at this time. However, because this is not a title or creation document, Judge Preska's order does not require us to produce the contract.

After considering your reasons, notwithstanding, if it were to be produced, we would need a confidentiality and sealing order regarding the document's use and dissemination.

Best,

Jonas M. Seider, Esq.

---

**From:** LaCava, Richard [mailto:[LaCavaR@dicksteinshapiro.com](mailto:LaCavaR@dicksteinshapiro.com)]  
**Sent:** Friday, July 18, 2008 5:11 PM  
**To:** Jonas Seider  
**Cc:** Filomena Arce  
**Subject:** RE: Tattoo Johnny

Jonas:

Thank you for the e-mail and attachments. I still have not yet received the copy of the contract with BZ Tees. Please send me that right away.

Best regards,

**Richard LaCava**  
Partner  
Dickstein Shapiro LLP  
1177 Avenue of the Americas | New York, NY 10036  
Tel (212) 277-6659| Fax (212) 277-6501  
lacavar@dicksteinshapiro.com

---

**From:** Filomena Arce [mailto:[farce@olenderfeldman.com](mailto:farce@olenderfeldman.com)]  
**Sent:** Friday, July 18, 2008 2:50 PM  
**To:** LaCava, Richard  
**Cc:** Jonas Seider  
**Subject:** Tattoo Johnny

Dear Mr. LaCava:

Please see the attached from Jonas Seider. Mr. Seider will be contacting you regarding these attachments. Thank you.

Filomena Arce  
Legal Assistant  
[farce@olenderfeldman.com](mailto:farce@olenderfeldman.com)  
OlenderFeldman LLP  
2840 Morris Avenue  
Union, New Jersey 07083  
(908) 964-2487  
(908) 810-6631- fax

29 West 38th Street - 17th Floor  
New York, New York 10018  
212-764-8905 (facsimile)

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Dickstein Shapiro LLP  
<http://www.DicksteinShapiro.com>

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**EXHIBIT G**



**Master Licensing Agreement**

This Master Licensing Agreement (this "Agreement") is made on this 19th day of May, 2008 ("Effective Date"), by and between Tattoo Johnny, Inc. a New Jersey Corporation ("Licensor"), whose address is 1510 Highway 74 N, #216, Tyrone, GA 30290 and BeeZeeTees, Inc. ("Licensee"),

WHEREAS, Licensor is the owner and/or authorized licensor of certain designs described on Schedule A attached hereto (each a "Work" and collectively, the "Works"), all as more particularly set forth herein;

WHEREAS, Licensee desires an exclusive license with respect to the Works to be produced by Licensee on the products described on Schedule B (collectively, the "Goods");

WHEREAS, Licensee will be selling the Goods through approved retailers ("Retailers") throughout the United States, its territories and Canada (collectively, the "Territory"); and

WHEREAS, Licensee also desires to use Licensor's trademarks described on Schedule C attached hereto (the "Trademarks") on the Goods incorporating reproductions of the Works.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1. Grant of License.**

**REDACTED**

**2. The Term and Termination.**

(a) *Term.*

(b) *Termination.*

**REDACTED**

i.

**REDACTED**

ii.

(c) *Effect of Termination.*

**REDACTED**

3. Artwork.

**REDACTED**

4. Distribution Channels.

**REDACTED**

5. Royalties/Other Payments.

**REDACTED**

REDACTED

6. Payment; Statements of Account; Books and Records.

- (a)
- (b)
- (c)
- (d)

REDACTED

7. Exclusivity.

- (a) *Exclusivity for the Goods.*

REDACTED

(b) *Exclusivity Threshold.*

REDACTED

(c) *Non-exclusivity.*

8. Confidential Information.

REDACTED

9. Quality Control.

REDACTED

10. Branding.

**REDACTED**

11. Approval of Goods.

**REDACTED**

12. Marketing Commitment.

**REDACTED**

13. Insurance.

**REDACTED**

**14. Representations and Warranties of Licensor.**

(a)

(b)

**REDACTED**

(c)

**15. Disclaimer of Warranties.**

**REDACTED**

**16. Acknowledgments by Licensee.**

**REDACTED**

**17. Conditions.**

**18. Indemnification.**

(a)

**REDACTED**

(b)

REDACTED

19. Force Majeure.

REDACTED

20. Assignment.

21. Intellectual Property Rights. Licensee shall give prompt notice to Licensor of all actual or suspected violations of Licensor's rights in the Works and in the Trademarks occurring in the Territory. Thereafter, Licensor shall consult with Licensee regarding what measures, if any, should be undertaken to enforce Licensor's rights in the Territory. Licensor shall have the right to enforce throughout the Territory, in its own name or that of Licensee, all rights to the Works and Trademarks. In the event that Licensor decides not to pursue action against an alleged infringer, Licensee shall have the right to do so (at Licensee's sole cost and expense), unless pursuit of such an action would reasonably be expected to have a negative impact on Licensor's business (for example, suit against an important retail partner of Licensor). Licensor shall assist Licensee in any manner reasonably requested in any such action or proceeding. The expenses for such action or proceeding by Licensee will be borne exclusively by Licensee and any recovery shall be retained by Licensee; provided, however, in the event that the reason for such action or proceeding is due to Licensor's actions or breach of its representation or warranties, then the cost of such action or proceeding shall be paid for by Licensor.

22. Promotion.

23. Notices.

REDACTED

**24. General Provisions.**

(a) *Independent Contractor.*

**REDACTED**

(b) *Choice of Law.*

**REDACTED**

(c) *Successor Obligation.* This Agreement shall bind and inure to the benefit of the heirs, successors, assigns and personal representatives of the parties hereto.

(d) *Survivability.* Sections 2(c), 3, 5, 6, 8, 14, 15, 16, 18, 20 and 21 shall survive termination of this Agreement.

(e) *Enforceability.* If any term or provision of this Agreement is illegal or unenforceable, then, nonetheless, this Agreement shall remain in full force and effect and such term or provision shall be deemed deleted or curtailed to such extent as is necessary to make it legal or enforceable.

(f) *Entire Agreement.* This Agreement represents the complete understanding between the parties as to its subject matter and supersedes all prior understandings, if any, as to its subject matter.

(g) *Amendment.* No modification or amendment, nor any promise, waiver or representation (past, present or future) shall be valid or binding unless made in writing and signed by the party to be bound thereby.

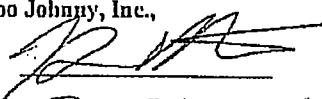
(h) *Legal Representation.* Each party acknowledges that it has had an opportunity to consult with legal counsel of their choosing in the negotiation and execution of this Agreement.

(i) *Confidentiality of Agreement.* Except as required by law, both parties hereby agree to keep confidential the terms of this Agreement and this obligation shall survive the Term.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereby execute this Agreement as of the Effective Date.

LICENSOR:

Tattoo Johnny, Inc.,

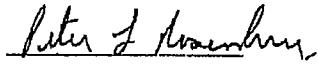
By: 

Name: DAVID BORT

Title: OWNER

LICENSEE:

Bee Zee Tees

By: 

Name: \_\_\_\_\_

Title: PRESIDENT

SCHEDULE A  
(Works)

Tattoo Johnny branded artwork

**SCHEDULE B**  
(Goods)

Children's Apparel: Infant creepers (onesies), toddler  
Adult Apparel: Mens, jrs. tees, swenis, and imprinted tops  
Accessories: Stickers, decals, pens etc. (non-exclusive)

**SCHEDULE C**  
(Trademarks)  
©2007 Tattoo Johnny, Inc. all rights reserved.

**SCHEDULE D**  
(Approved Channels)

**REDACTED**